

UNITED STATES  
v.  
EVELYN M. KIGGINS ET AL.

IBLA 72-121

Decided March 18, 1976

Petition by contestees for Reconsideration of Departmental decision in mineral contest Oregon 013204, which rejected their mineral patent application and declared their mining claims null and void.

Set aside and remanded.

1. Mining Claims Contests -- Mining Claims: Hearings

The Board of Land Appeals may set aside a previous Departmental decision, which declared mining claims invalid for lack of discovery, and remand the case for a further hearing, where contestees submitted a Petition for Reconsideration with affidavits alleging that, since the hearing, the claims have been mined by lessees who have approximately 10,000 tons of minable ore blocked out with assays averaging from 6 to 8 pounds of mercury per ton of ore.

APPEARANCES: Irving Rand, Esq., Portland, Oregon, for contestees; Arno Reifenberg, Esq., Office of the General Counsel, U.S. Department of Agriculture, Portland, Oregon, for the United States.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On or about October 22, 1969, the contestees 1/ filed a Petition for Reconsideration of the Departmental decision in United States

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1/ The contestees are Evelyn M. Kiggins, individually and as administratrix of the estate of Douglas E. Kiggins, Murray M. Kiggins, James A. Kiggins and Ester Kiggins.

v. Evelyn M. Kiggins et al., A-30827 (July 12, 1968), which inadvertently had not been included in the case record. 2/ That decision rejected the contestees' mineral patent application and declared their Vermilion and Vermilion No. 2 lode mining claims null and void. 3/

We have reviewed the entire case record and find the decision of July 12, 1968, to be correct on the basis of the record as presently constituted.

However, contestees with their Petition submit affidavits, together with assay reports, alleging that since the hearing in October 1964 the claims have been mined by lessees who have exposed additional ore and presently have approximately 10,000 tons of minable ore blocked out assaying from 3 to 25 pounds of mercury per ton, and averaging from 6 to 8 pounds of mercury per ton. In view of these allegations, we feel that a further hearing is in order. Cf. United States v. Paul B. Dessieux, A-31016 (November 25, 1969).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the departmental decision A-30827 is hereby set aside, and the case is remanded to the Chief Administrative Law Judge of the Department of the Interior, for a further hearing before an Administrative Law Judge, at which time both parties will be afforded an opportunity to present such additional evidence as they may have to offer pertaining to the validity of the claims.

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2/ The Petition for Reconsideration was either lost or misplaced and did not come to light until August 1972 after an exchange of correspondence with the contestees' attorney.

3/ On an ancillary proceeding, this Board issued a decision on June 26, 1972, upholding the rejection of a verified statement involving the same claims (Oregon 012727-A) (6 IBLA 235). However, in view of the Petition for Reconsideration, that decision was set aside by order of this Board dated August 21, 1972, pending the ultimate decision in the contest case (Oregon 013204), which may be determinative of the issues involved in 012727-A.

The Judge will submit a recommended decision along with the case record to this Board for consideration and final decision.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Newton Frishberg  
Chief Administrative Judge

Frederick Fishman  
Administrative Judge

